

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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SPARTAN BUSINESS SOLUTIONS LLC
D/B/A SPARTAN CAPITAL,

Plaintiff,

23 Civ. 06728 (FPG)

-- against --

MARQUIS CATTLE COMPANY INC.
D/B/A MARQUIS CATTLE COMPANY;
MONTANA MOUNTAIN BISON, INC.;
MCC TRUCKING LLC;
M HANGING 6 RANCH LLC D/B/A PUMP'T;
MARQUIS CATTLE INC.; and
CORY SHANNON MARQUIS,

Defendants.

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NOTICE OF CROSS-MOTION

PLEASE TAKE NOTICE that upon the Declaration of David Kasell, Esq., dated January 31, 2024, with exhibits attached thereto, and the accompanying Memorandum of Law (that also opposes Plaintiff's motion to remand), dated January 31, 2024, Defendants Marquis Cattle Company Inc. d/b/a Marquis Cattle Company, Montana Mountain Bison, Inc., MCC Trucking LLC, M Hanging 6 Ranch LLC d/b/a Pump't, Marquis Cattle Inc., and Cory Shannon Marquis ("Defendants"), cross-move for an Order:

1. giving them relief "from a final judgment, order, or proceeding" due to the "misrepresentation, or misconduct by an opposing party" under to Rule 60(b)(3) of the Federal Rules of Civil Procedure ("Federal rules") and deciding whether Plaintiff waived the right to arbitrate or compelling the parties to arbitration, and
2. if the Court deems it necessary to issuing such an Order, limited discovery and an *in camera* hearing on Plaintiff's Counsel's decision to **not** seek arbitration after Plaintiff's Counsel stated to the Court: "If the Court finds that to be the case and remands the action to state court, **Plaintiff will file its motion to compel arbitration in state court.**" ECF No. 1, ¶13 (quoting Plaintiff's Reply Brief in 23 Civ. 06258).

and for such other and further relief as the Court deems just and proper.

Pursuant to Rule 7(b) of the Local Rules of the Western District of New York, Defendants also give notice of their intent to reply to any brief submitted in opposition to this cross-motion within fourteen (14) days of receiving responding papers to this cross-motion.

Dated: Rochester, NY
January 31, 2024

/s/ Brian Goodwin
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Attorney for Defendants